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ROBERT MATOS and SLOBODAN PRANJIC

**FILED**  
DISTRICT COURT OF GUAM

APR 17 2007

MARY L.M. MORAN  
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE TERRITORY OF GUAM

TCW SPECIAL CREDITS, et al.

Plaintiffs,

v.

FISHING VESSEL CHLOE Z,  
Et al.,

Defendants.

Case No. 96-00055

**PLAINTIFFS ROBERT MATOS AND  
SLOBODAN PRANJIC'S REPLY TO  
CHLOE Z'S OPPOSITION TO  
PLAINTIFFS' MOTION TO  
WITHDRAW FUNDS AND CHLOE Z'S  
SUPPLEMENTAL BRIEF IN  
OPPOSITION TO PLAINTIFFS'  
MOTION TO WITHDRAW FUNDS**

Plaintiffs ROBERT MATOS and SLOBODAN PRANJIC, by their  
counsel, Dwight Ritter, reply to CHLOE Z's oppositions to  
plaintiffs' request to withdraw funds based on the following:

1. Plaintiffs MATOS and PRANJIC are entitled to  
disbursement of funds upon the entry of a judgment. In September  
of 2006, the 9<sup>th</sup> Circuit ordered entry of judgment in a mandate  
to the Guam District Court. Since the 9<sup>th</sup> Circuit mandate to the  
Guam District Court, MATOS and PRANJIC filed their request for  
judgment on October 17, 2006 and yet no action has been taken by

ORIGINAL

1  
2 the District Court to establish the MATOS and PRANJIC judgments.  
3 MATOS and PRANJIC continue in their efforts to have *in rem*  
4 judgments established in their favor, per 9<sup>th</sup> Circuit mandate,  
5 for all lawful prejudgment and post-judgment interests in the  
6 total amount of \$ 2,375,000. There is no stay from the 9<sup>th</sup>  
7 Circuit or the United States Supreme Court precluding or  
8 disfavoring entry of these judgments. In fact, CHLOE Z has not  
9 even requested a stay of execution from any court, although  
10 CHLOE Z does object to disbursement of funds.

11  
12 2. Once judgments are entered, then MATOS and PRANJIC are  
13 immediately entitled to withdrawal of funds sufficient to  
14 satisfy those judgments. There is no stay from the 9<sup>th</sup> Circuit  
15 on collection of the judgments. There is no stay from the United  
16 States Supreme Court as to the collection of these judgments.  
17 There is no stay from the Guam District Court. The only  
18 legitimate means by which CHLOE Z can prevent collection of  
19 these judgments is by posting a supersedeas bond sufficient to  
20 fully secure the judgments until appellate issues are resolved.  
21 FRCP 62(d) Both Sphere Drake, the insurer of the CHLOE Z, and  
22 TCW are capable of posting bonds. In addition, TCW could  
23 reimburse the Court Registry with the funds improperly withdrawn  
24 ahead of MATOS and PRANJIC's priority claims.

25 3. In CHLOE Z's opposition, CHLOE Z claims that judgments  
26 cannot be entered in the amount of \$ 2,375,000 because,  
27 according to CHLOE Z, there are insufficient funds to pay these  
28 judgments. However, CHLOE Z in its Supplemental Brief to the

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2  
3 court, acknowledges that TCW apparently withdrew \$ 5,500,000  
4 from the Court Registry even though MATOS and PRANJIC had  
5 priority judgments ahead of TCW's subordinate claims. See CHLOE  
6 Z Supplemental Brief and TCW's Motion for Partial Distribution  
7 of Vessel Proceeds. TCW falsely represented to the district  
8 court the full amount of the MATOS and PRANJIC claims and  
9 thereby converted \$ 5,000,000 out of the Court Registry  
10 improperly to TCW's benefit. In October, 2001, TCW wrongfully  
11 stated: "At this point it is irrefutably clear from the  
12 arithmetic that the remaining CHLOE Z Vessel sale proceeds are  
13 at least now \$ 5,500,000 in excess of the reserve needed to  
14 satisfy the maximum possible in rem liens of all three personal  
15 injury claimants." (TCW emphasis) See TCW's Motion for Partial  
16 Distribution of Vessel Proceeds, page 6, lines 14-16, attached  
17 as Ex.1. The above quote taken from TCW's Motion for Partial  
18 Distribution of Vessel Proceeds is both false and inaccurate.  
19 As a result of TCW's wrongful withdrawal, there are not adequate  
20 funds in the Court Registry to cover the MATOS and PRANJIC  
21 judgments in the amount of \$ 2,375,000.


22 4. Nonetheless, the insurer, Sphere Drake, who is  
23 currently defending CHLOE Z, has a \$ 25,000,000 protection and  
24 indemnity insurance policy that requires reimbursement of any  
25 personal injury claims depleted from the CHLOE Z's assets or  
26 res. Sphere Drake's obligation exists even if funds have been  
27 wrongfully depleted. Thus, there should now be more than  
28 \$ 5,000,000 in the Court Registry and adequate indemnity from

1  
2  
3 Sphere Drake to satisfy MATOS and PRANJIC judgments in the  
4 amount of \$ 2,375,000.

5 5. CHLOE Z is entitled to appeal issues in they choose.  
6 However, these appeals cannot occur at the expense of MATOS and  
7 PRANJIC who are entitled to secure judgments. During appeal,  
8 CHLOE Z or TCW must bear the costs of appeal and must secure the  
9 MATOS and PRANJIC judgments by posting a bond or reimbursing the  
10 Court Registry with sufficient funds to cover the judgments.

11 6. In order to verify the deposits and disbursements from  
12 the Court Registry, regarding various creditors, MATOS and  
13 PRANJIC are seeking a full accounting from the banks holding the  
14 Court Registry funds. Multiple attempts have been made to obtain  
15 a full accounting, by both written and oral requests, but to no  
16 avail. MATOS and PRANJIC continue their requests to obtain a  
17 full accounting to determine the full amount of proceeds that  
18 should be in the Court Registry and the current amount of  
19 proceeds in the Registry after various disbursements.

20  
21 Dated: 4/11, 2007

  
DWIGHT RITTER, Esq.  
Attorney for Plaintiffs,  
ROBERT MATOS and  
SLOBODAN PRANJIC

FILED  
DISTRICT COURT OF GUAM

OCT 26 2001

WILLIAMSON  
CLERK OF COURT

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15 Attorneys for Plaintiff  
16 TCW Special Credits

17 UNITED STATES DISTRICT COURT  
18 DISTRICT OF GUAM

19 TCW SPECIAL CREDITS, et al.,

20 Plaintiff,

21 v.

22 FISHING VESSEL CHLOE Z, et al.,

23 Defendant.

24 JUAN BARNADIARAN, et al.,

25 Plaintiffs-in-  
26 Intervention.

27 RELATED CLAIMS-IN-INTERVENTION

No. 96-00055

TCW'S MOTION FOR SUMMARY  
JUDGMENT ON PROMISSORY  
NOTE, MORTGAGE AND OTHER  
COLLATERAL INSTRUMENTS;  
AND FOR PARTIAL DISTRIBUTION  
OF VESSEL SALE PROCEEDS TO  
MORTGAGEE; CERTIFICATE OF  
SERVICE

[ORAL ARGUMENT NOT  
REQUESTED]

28 Plaintiff TCW Special Credits ("TCW") moves for summary judgment on its claims on  
29 the defaulted promissory note, and the preferred ship mortgage and other collateral instruments  
30 securing the promissory note; and for distribution to TCW of a portion of the vessel sale proceeds.

31 TCW'S MOTION FOR SUMMARY JUDGMENT - 1

1 TCW does not request oral argument.

2 As the Court knows, there has been a final, comprehensive settlement reached between  
3 TCW and Crew Claimants, and that settlement has been fully implemented. See, Stipulation and  
4 Order Approving Settlement, Etc. ("Settlement Approval Order"), entered September 19, 2001.  
5 The settlement between TCW and Crew was reached only after lengthy negotiation and mutual  
6 compromise. That settlement resolves litigation concerning the Crew wage claims that has lasted  
7 more than five years, and has included scores of motions to this court, a trial, and multiple  
8 appeals. TCW is therefore most pleased to be able to advise the Court of the settlement with the  
9 Crew.

10 Following in logical sequence from that settlement, TCW's present motion is a necessary  
11 next step toward the final completion of this litigation.

12 Relative to this motion, there are no facts in dispute.

13 A. Summary Judgment and Order of Disbursal Requested.

14 TCW requests entry of summary judgment against defendant Chloe Z Fishing Co., Inc.  
15 ("CZFC, Inc.") for money judgment on the sum certain owed by CZFC, Inc., on its defaulted  
16 promissory note (the "Term Loan Note"); and for foreclosure of the preferred ship mortgage  
17 ("Preferred Ship Mortgage") the F/V CHLOE Z, Official No. Official No. 653391 ("Vessel") and  
18 of the other collateral instruments sued on in TCW's verified Complaint.

19 As of September 30, 2001, the defaulted indebtedness owed by CZFC, Inc., on the Term  
20 Loan Note is \$19,225,956.01, exclusive of legal fees. Interest continues to accrue on the  
21 defaulted principal balance of the Term Loan Note at the rate of \$3,580.57 per diem, from  
22 September 30, 2001, until paid. Mazurek Declaration, ¶ 3.

23 TCW also requests an order disbursing to TCW proceeds of the sale of the Vessel, now  
24 held in the registry of the Court, but ~~reserving~~ in the registry ample funds for eventual  
25

1 satisfaction of liens as may be established by personal injury claimants Slobodan Pranjic, Robert  
2 Matos and Vjeko Maric (together, "Personal Injury Claimants").

3 **B. Evidence Relied Upon.**

4 In support of this motion, TCW relies on the following evidence:

- 5 1. The prior orders of this Court, as cited in this memorandum.
- 6 2. The Clerk's entry of defaults, on file in this action.
- 7 3. Declaration of Mariusz Mazurek, dated October 16, 2001, filed herewith.
- 8 4. TCW's verified Complaint ("TCW Complaint") and exhibits attached thereto, on  
9 file in this action.
- 10 5. Declaration of D. Paul Vernier, Jr., presenting the Statement of Account, dated  
11 October 24, 2001, from US District Court Office of the Clerk.

12 **C. History and Procedural Background of Case.**

13 As established in the verified TCW Complaint, TCW is the holder of the Preferred Ship  
14 Mortgage the CHLOE Z, which secures the obligations of the Vessel's owner, CZFC, Inc., under  
15 a Loan Agreement and Term Loan Note. TCW holds additional security for those obligations by  
16 virtue of CZFC, Inc.'s grants of security and assignment under a Security Agreement and  
17 Assignment of Insurances. To the best knowledge of TCW, no party in this action has ever  
18 materially contested the accuracy of any allegation made in the TCW Complaint.

19 The Term Loan Note was made and delivered by CZFC, Inc., on October 15, 1991. The  
20 original lender to CZFC, Inc., and the indicated payee on the Term Loan Note, is a Norwegian  
21 bank, Christiania Bank. However, TCW purchased Christiania Bank's interest in the Term Loan  
22 Note (and in all supporting collateral, including the Preferred Ship Mortgage) on June 30, 1995.  
23 CZFC, Inc.'s obligations under the Term Loan Note have been in default since July 1, 1993.

24 The TCW Complaint was filed on July 5, 1996.

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22 Note (and in all supporting collateral, including the Preferred Ship Mortgage) on June 30, 1995.  
23 CZFC, Inc.'s obligations under the Term Loan Note have been in default since July 1, 1993.

24 The TCW Complaint was filed on July 5, 1996.



1 TCW immediately moved for a warrant of arrest of the Vessel. The Vessel was forthwith  
2 arrested, as was her fish catch aboard ("Fish Catch").

3 Proper service and notice of the action and of the arrest was given to all interested persons.  
4 Sec. Certificate of Mailing, filed July 11, 1996 (notice given to all lien claimants); return of  
5 service on registered agent for GZFC, Inc., dated July 16, 1996; and Declaration of Maggie  
6 Castro, regarding publication of Notice in Pacific Daily News, filed July 18, 1996.

7 The Clerk on September 26, 1996, entered a Default against CHLOE Z and GZFC, Inc., as  
8 to TCW's Complaint. Also, on April 20, 1998, the Court entered an Order of Default Against  
9 All Non-Appearing Claimants to the Vessel and Against Chloee Z Fishing Co., Inc.

10 The following claimants asserted claims against the Vessel and/or its Fish Catch by way  
11 of complaints-in-intervention: Starkist Caribe, Inc. and Star-Kist Foods, Inc. (the Starkist parties  
12 together filed one complaint, on July 26, 1996); a group of unpaid seamen who served aboard the  
13 CHLOE Z ("Crew Claimants") (filed July 30, 1995, and amended and supplemented thereafter);  
14 Shell Guam, Inc. (filed August 19, 1996); and Clipper Oil Company (filed October 9, 1996); and  
15 the three Personal Injury Claimants.

16 An Order for Interlocutory Sale of the Fish Catch was entered on August 9, 1996. On  
17 August 20, 1996, the Fish Catch was sold at auction by the US Marshal for the winning bid of  
18 \$725,000. The proceeds of that sale ("Fish Catch Sale Proceeds"), net of certain sale costs, was  
19 deposited in the registry of the Court.

20 An Order for Interlocutory Sale of the Vessel was entered on October 17, 1996. On  
21 December 3, 1996, the CHLOE Z was sold at auction by the US Marshal for the winning bid of  
22 \$6,710,000. The proceeds of that sale ("CHLOE Z Vessel Sale Proceeds"), net of certain sale  
23 costs, was deposited in the registry of the Court.

24  
25  
26 TCW'S MOTION FOR SUMMARY JUDGMENT - 4

1 The complaints in intervention of Starline, Shell-Guan, and Clipper Oil Company  
2 (collectively, "Trade Claimants"), were resolved by settlement with TCW reached in 1998. In  
3 order to achieve those settlements, TCW paid a substantial sum of money to each of the Trade  
4 Claimants, and received an assignment of the Trade Claimant's claim and lien rights. Mazurek  
5 Decl. ¶ 4 and Exs. B, C and D. TCW entered those settlements in an effort to simplify the  
6 litigation. At the time, TCW was well aware that the liens of the Trade Claimants were "out of  
7 the money," since the senior liens - namely, the custodia legis lien, the Crew wage lien, the  
8 Personal Injury Claimant lien, and the Preferred Ship Mortgage lien - would certainly consume  
9 all available Vessel Sale Proceeds and Fish Catch Proceeds (and yet still leave a multi-million  
10 dollar shortfall in the payment of the Preferred Ship Mortgage lien<sup>1</sup>).

11 As noted above, the claims of all Crew also have been resolved by settlements. All  
12 settlements, including settlements made early in the case (and specifically including the six  
13 disputed settlements) have now fully agreed, paid and resolved, and all Crew wage claims have  
14 been entirely and finally resolved. See, Settlement Approval Order, entered September 19, 2001.

15 The Settlement Approval Order authorized disbursement to the Crew of nearly the entirety of  
16 the Fish Catch Sale Proceeds; and further authorized disbursement of the then relatively small  
17 remaining balance of Fish Catch Sale Proceeds to TCW in partial satisfaction of TCW's approved  
18 custodia legis lien. Those disbursements exhausted the entire Fish Catch Sale Proceeds.

19 Therefore, as a result of the various settlements entered by lead plaintiff TCW, the case is  
20 much closer to final resolution, and now stands considerably simplified. The structure of the case  
21 is now as follows:

22  
23  
24 <sup>1</sup> It is a mathematical certainty that the multi-million dollar shortfall will exist even after  
25 realization on all collateral available in this case and in the case of TCW v. E/V KASSANDRA Z.  
pending in the High Court of American Samoa.

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- There remains on deposit in the registry of the Court the total funds in the amount of \$7,742,869.29, as of October 24, 2001. Vernier Declaration. Those funds continue to accrue interest<sup>2</sup>. Those funds are the remaining CHLOE Z Vessel Sale Proceeds.
  - The only asserted liens against the CHLOE Z Vessel Sale Proceeds are:
    - FIRST, the in rem claims of the Personal Injury Claimants;
    - SECOND, the lien of the Preferred Ship Mortgage, held by TCW; and
    - THIRD, the liens of the Trade Claimants Starkist, Shell-Guam, and Clipper-Oil; however, as noted above, those liens have been assigned to PCW, following TCW's substantial payments to and settlements with the three Trade Claimants.

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D. Personal Injury Claimant Liens.

The in rem claims of the three Personal Injury Claimants, Pranjic, Matos and Mazic, have now been substantially determined by the Court. All three in rem cases have been tried, appealed, and remanded.

At this point, it is irrefutably clear from the arithmetic that the remaining CHLOE Z Vessel Sale Proceeds are at least some \$5,500,000 in excess of the reserves needed to satisfy the maximum possible in rem liens of all three Personal Injury Claimants.

Here is the history of the in rem claims of the Personal Injury Claimants, leading to the present maximum liquidation value of those claims:

<sup>2</sup> The interest being earned on the CHLOE Z Vessel Sale Proceeds invested by the Clerk compares favorably to the federal judgment interest rate. The investment rate now being paid on the funds, held in two instruments, one at the Bank of Guam and another at the Bank of Hawaii, is 2.37% and 2.75%, respectively. By comparison, as of October 19, 2001, the current federal judgment interest rate is 2.37% (see, 28 U.S.C. §1961, specifying that, after December 31, 2000, the federal judgment interest rate is equal to the weekly average of 1-year constant maturity Treasury yield, which yield is available on the Federal Reserve website, [www.federalreserve.com](http://www.federalreserve.com).)

- Pranjic's in rem claims were tried beginning July 27, 1998. The Court entered its trial decision on January 11, 1999. The judgment award was \$577,420. The Ninth Circuit's ruling reduced the award by about \$44,000.
- Mazic's in rem claims were tried beginning July 15, 1998. The Court entered its trial decision on January 11, 1999. The judgment award was \$629,958. The Ninth Circuit ruling reduced the award by about \$43,000.
- Matos's in rem claims were tried beginning July 20, 1998. The Court entered its trial decision on February 19, 1999. The judgment award was \$521,514. The Ninth Circuit ruling may (though not certainly) result in an increase to the award, with the addition of prejudgment interest. That prejudgment interest, if awarded, can reasonably be estimated at a maximum of, say, \$242,000 (6.5 years x 6.0%).

All three cases now await the trial court's decision on post-remand motions in accordance with the appellate court's opinions.

Therefore, accounting for the Ninth Circuit rulings, and allowing for post-judgment interest, the following is the total liquidated in rem claims, which are payable by lien on the CHLOE Z Vessel Sale Proceeds:

**Pranjic**

Trial Award	577,420
Ninth Circuit Reduction	(44,000)
Accrued Post Judgment Interest <sup>3</sup>	50,675
Total	\$584,095

<sup>3</sup> This interest (for all three Personal Injury Claimants) is calculated at: 1 year x 6.0% + 1 year x 3.5%, a very liberal estimation reflecting both the date of remand of the these cases and the applicable federal judgment interest rates since that date (the reference instrument used to determine the federal judgment interest rate changed as of December 21, 2000).

1 (still leaving, as noted above, a substantial deficiency on the Ship Mortgage Lien). At that point,  
2 the case will be concluded.

3 **E. Lien Priority.**

4 There is no issue as to lien priority.

5 As a matter of law, the lien priority is as follows:

6 (1) TCW's lien for custodial expenses (now fully paid);

7 (2) Crew's wage liens (all Crew claims are resolved and fully  
8 paid);

9 (3) maritime tort liens of the Personal Injury Claimants' in rem  
10 claims (liquidated to maximum amount of \$2.2 million, not yet  
11 paid);

12 (4) TCW's preferred mortgage lien (liquidated and undisputed;  
13 not yet paid); and

14 (5) the Trade Claimants' liens (all paid by TCW, and assigned  
15 and held by TCW).<sup>3</sup>

16 See 46 U.S.C. §§ 31325, 31326; Cargill, Inc. Submarine Insurance v. M/T Pacific Dawn, 876  
17 F. Supp. 508, 510-11 n.2 (S.D.N.Y. 1995); United States v. One 254 Ft. Freight M/V Andoria,  
18 570 F. Supp. 413, 415 (E.D. La. 1983), aff'd, 768 F.2d 597 (5th Cir. 1985); T. Schoenbaum,  
19 Admiralty and Maritime Law § 8-6 (1987).

20 TCW stipulates that the in rem liens of the Personal Injury Claimants, to the extent finally  
21 determined, are senior to TCW's Preferred Ship Mortgage Lien and to the Trade Claimants' liens  
22 now held by TCW as assignee.

23  
24 <sup>3</sup> Because the proceeds of the CHLOE-2 are insufficient to satisfy TCW's preferred mortgage  
25 lien, the priority of the remaining claims is insignificant.

1           **F.     Judgment and Order Requested.**

2           TCW in this case is an innocent, good faith Preferred Ship Mortgagee. TCW funded the  
3     arrest and custodianship of the Vessel, for the benefit of all parties. TCW has entered settlements  
4     with all possible parties: the Crew, Starlink, Shell-Guam and Clipper Oil. (TCW cannot enter  
5     settlements with the Personal Injury Claimants, since those claims are being defended by  
6     insurance defense counsel.) TCW patiently has waited to realize on its mortgage lien for more  
7     than some five and one-half years.

8           Summary judgment should issue when there is no genuine issue of material fact. Fed. R.  
9     Civ. P. 56, as is the case with this motion.

10          Submitted herewith is a requested form of Judgment and Order.

11          The final judgment amount should be a sum equal to \$19,225,956.01 plus interest at the  
12     per diem rate of \$3,580.57, from September 30, 2001, until date of entry of judgment, and  
13     disbursement to TCW should be ordered as requested in the amount of \$5,300,000.00.

14          DATED this 26<sup>th</sup> day of October, 2001.

15                                 Attorneys for TCW Special Credits

16                                 McKEOWN • VERNIER • PRICE • MAHER

17                                 By   
18                                 D. PAUL VERNIER, JR.